

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

MICHAEL BISHOP,

Plaintiff,

v.

THOMAS P. BOSTICK *et al*,

Defendants.

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Civil Action No. 9:13-cv-82

**ORDER ADOPTING REPORT AND RECOMMENDATION ON MOTION TO VACATE
CLERK'S ENTRY OF DEFAULT**

Plaintiff filed suit against Defendants, which are officers or agencies of the United States government, in April 2013. This proceeding was originally referred to United States Magistrate Judge Judith Guthrie for determination of non-dispositive pretrial matters pursuant to 28 U.S.C. § 636 and the Local Rules for the Assignment of Duties to United States Magistrate Judges. Upon Judge Guthrie's retirement in August 2013, the case was reassigned to United States Magistrate Judge Keith F. Giblin. Defendants did not file answers or otherwise respond to the petition.

In November 2013, Plaintiff filed a request that the Clerk enter default against Defendants, and stated in an accompanying affidavit that Defendants had been served in accordance with Federal Rule of Civil Procedure 4.. A Clerk's entry of default was entered on November 6, 2013. The following day, Defendants filed a motion to vacate the entry of default, arguing that they had not been properly served because the United States Attorney's Office for the Eastern District of Texas was not served with process as required by Rule 4(i)(1)(A). Plaintiff acknowledged that this was not done properly, but suggested that he complied with the rule by filing his Complaint with the Clerk.

Judge Giblin entered a Report and Recommendation on November 14, 2013, rejecting Plaintiff's contention and recommending that Defendants' motion to vacate the Clerk's entry of default be granted. Doc. # 22. The Report and Recommendation also recommended directing Plaintiff to properly serve Defendants in accordance with Federal Rule of Civil Procedure 4(i)(A); however, noting that Plaintiff is *pro se* and Defendants have not suggested Plaintiff failed to comply with Rule 4(i)(1)(B), (C) or Rule 4(i)(2), Judge Giblin recommended that Plaintiff only be required to comply with Rule 4(i)(1)(A) when re-serving Defendants. No objections were filed to this Report and Recommendation by either side.

Therefore, the objections period having run and no party having filed objections, the court ADOPTS the magistrate judge's Report and Recommendation [Doc. # 22] and GRANTS Defendants' Motion to Vacate Clerk's Entry of Default [Doc. # 20]. Plaintiff is directed to properly serve Defendants in accordance with Rule 4(i)(1)(A) within fourteen (14) calendar days of this Order.

So **ORDERED** and **SIGNED** this **3** day of **December, 2013**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge